

Francis M. Pinckney, Esq.
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3740 One First Union Center
301 South College Street
Charlotte, NC 28202-6020

Re: Petition to Revive Application Serial No. 75-089402
Applicant: Savany's Best, Inc.
For: SAVANY'S BEST

Dear Mr. Pinckney:

This will acknowledge receipt of the petition to revive the above-identified application, filed July 3, 1997.

FACTS

On April 16, 1996, Applicant filed for registration of the trademark, SAVANY'S BEST. An Office Action was mailed to the Applicant on October 29, 1996, which required a response within six (6) months from its mailing date. The response to the Office Action was due in this Office on April 29, 1997, but was not received until April 30, 1997. Since the deadline for responding had expired, the file was abandoned on June 5, 1997.

DECISION AND ANALYSIS

Decision: Petition to Revive is hereby DENIED.

Applicant requests that a filing date of April 28, 1997 be given to the response in consideration of the time generally required for mail to be delivered from North Carolina to Virginia. As such, Applicant argues that the response to the Office Action must have been mailed before the due date.

In this case, an earlier filing date of the response was denied due to the absence of a certificate of mailing on the response. Where no certificate of mailing is used, the filing date of a document in the Patent and Trademark Office is the date of receipt in the Office, not the date of deposit of the mail. 37 C.F.R. § 1.6. The procedures followed by Applicant, which ordinarily ensure the placing of such stamp on correspondence to the Trademark Office, failed in this one instance, resulting in the certificate of mailing stamp being omitted from the response. While this error may have been inadvertent and unintentional, it is not considered unavoidable, and the petition to revive is denied.

APPLICANT MAY FILE A NEW APPLICATION

Applicant may file a new application. This Office will not hold the abandonment of this application as being prejudicial to the Applicant in the filing of a new application. Currently, the application filing fee is \$245.00 per class.

If you have any questions or need further assistance, please feel free to call **Hae Park at (703) 308-8910, ext. 35.**

Sincerely,

Nancy L. Omelko
Administrator for Petitions
Office of the Assistant Commissioner
for Trademarks
(703) 308-8910, ext. 39

NLO/hsp